Supreme Court, U. S.
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. 76-1462

FLOYD H. DANIELS,

Appellant and Petitioner,

vs.

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, a public corporation; and JACK R. GILSTRAP, as General Manager of the SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT,

Appellees and Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Los Angeles, California 90016
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In Propria Persona

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Appellees and Respondents.

PETITION FOR WRIT OF CERTIORARI

Petitioner, FLOYD HIRAM DANIELS, petitions for Writ of Certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit entered on February 7, 1977, in which Appellant's Petition For Rehearing filed on December 27, 1976 was DENIED, and thereby affirming the United States

District Court for the Central District of California; wherein, Petitioner's Motion For Leave To File Amended Complaint was DENIED and entered on May 5, 1976.

Petitioner alleges:

OPINIONS BELOW

The opinion(s) delivered in the Courts below have not been reported. The Memorandum Opinion Dismissing Appellant's Appeal, and the order entered on February 7, 1977, in which Appellant's Petition For Rehearing filed on December 27, 1976 was denied by the Court of Appeals for the Ninth Circuit is not appended to this Petition.

JURISDICTION

The grounds on which the jurisdiction of this Court is invoked is that the Court of Appeals has decided two (2) important questions of federal law which should be settled by this Court.

1. The District Court Order entered on May 5, 1976, in which Plaintiff's Motion For Leave To File Amended Complaint was denied.

2. The Order of the United States Court of Appeals, Ninth Circuit, that was entered on February 7, 1977; in which, Appellant's Petition For Rehearing was

denied on the Dismissal of Appeal in Petitioner's Cause of Action.

The statutory provision believed by Petitioner to confer on this Court's jurisdiction to review the judgment in question by Writ of Certiorari are Title 42, U.S.C., Section 1981; California Code of Civil Procedure, Section 337(1); Rules 15(b) and 15(b), Title 28, Federal Rules of Civil Procedure; Rule 60(b), Title 28, Federal Rules of Civil Procedure; and, the 14th Amendment of the Constitution of these United States.

QUESTIONS PRESENTED

The questions presented for review are as follows:

A. Whether the District Court improperly denied Petitioner's Motion For Leave To File Amended Complaint, to conform to the evidence; and establish jurisdiction pursuant to Title 42, U.S.C., Section 1981, based upon Material Newly Discovered Evidence of Racial Discrimination; and, to establish jurisdiction pursuant to the California Code of Civil Procedure, Section 337(1), as the most appropriate State Law controlling the Statute of Limitations in this Cause of Action based upon a Discriminatory Breach of the Written Contract?

B. Whether the United States Court of Appeals, Ninth Circuit, improperly denied Petitioner's Petition For

Rehearing for correcting Petitioner's mistake made in filing the Motions on December 15, 1975, pursuant to Rule 60(b), (1), Title 28, Federal Rules of Civil Procedure, and filing Motion For Leave to File Amended Complaint, as a motion in the District Court on January 21, 1976, pursuant to Rules 15(b), and Rule 60(b), Title 28, Federal Rules of Civil Procedure, also, in which Petitioner abided by the "Sound Discretion of the District Court" in seeking relief from a "final judgment" of the District Court?

STATUTES INVOLVED

The Statutes involved in this Case are the 14th Amendment of the Constitution of the United States of America; Title 42, U.S.C., Section 1981; 337(1), California Code of Civil Procedure; Rule 15(b) and 15(c), Title 28, Federal Rules of Civil Procedure; and, Rule 60(b), Title 28, Federal Rules of Civil Porcedure.

The 14th Amendment of the Constitution of the United States of America provides: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United

States, nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Title 42, U.S.C., Section 1981 provides: All person within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other. R.S. 1977.

337(1), California Code of Civil Procedure provides: Within four years: 1. An action upon any contract obligation or liability founded upon an instrument in writing, except as provided in section 336a of this code; provided, that the time within which any action for a money judgment for the balance due upon an obligation for the payment of which a deed of trust or mortgage with power or sale upon real property or any interest therein was given as security, following the exercise of the power of sale in sale in such deed of trust or or mortgage may be brought shall not extend beyond three months after the time of the sale under such deed of trust or mortgage.

Rule 15(b), Title 28, Federal

Rules of Civil Procedure provides: (b) Amendments to conform to Evidence. When issues not raised by the pleadings are tried by express or implied consent of parties, they shall be treated in all respect as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon Motion of any party at any time even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant continuance to enable the objecting party to meet such evidence.

Rule 15(c), Title 28, Federal Rules of Civil Procedure, in pertinent part provides: (c) Relation Back of Amendments. When the claim of defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.

Rule 60(b), Title 28, Federal

Rules of Civil Procedure provides: Rule 60(b) provides, On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed, or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., Section 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the

nature of a bill of review, or abolished, and the procedure for obtaining an relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

CONCISE STATEMENT OF CASE

The statement of the Case is more fully stated in Petitioner's Statement Of The Case in his Opening Brief tc the Court of Appeals for the Ninth Circuit, is in the Appendix.

The facts material to the consideration of the questions presented are as follows:

Petitioner was employed by Respondents as a Bus Operator on January 11, 1964.

After a conference with the Division Manager, Mr. James Carson, Petitioner filed an application to teach in the Los Angeles Unified School on September 26, 1968. A condidential Reference of Approval was submitted to the Los Angeles Unified School District by Respondents on October 3, 1968.

Petitioner started performing dual employment of operating a bus in the late evenings and nights; and teaching Mathematics in the Los Angeles Unified School District during the day on October 28, 1968. Petitioner continued this dual employment with an excellent

driving record, and an excellent teaching record through March 20, 1970; when Petitioner was arrested on an allegation a female passenger who signed a complaint with the Los Angeles Police Department.

On March 27, 1970, Petitioner was put on an agreed suspension by Respondents.

On April 24, 1970, Respondents broke the agreed signed suspension, and discharged Petitioner.

On June 19, 1970, Petitioner received a Verdict of NOT GUILTY by an Honorable Judge and Jury in the Superior Court in, and for the County of Los Angeles.

On July 19, 1970, Petitioner was reinstated to the service of operating a bus for Respondents, with the conditions that operating bus for Respondents would be Petitioner's only employment.

Pursuant to Article 27, Section 10, of the Written Contract, Petitioner and the Union appealed the reinstatement with conditions to the next level of appeals in accordance with the Written Contract.

On September 17, 1970, the Union pursuant to Article 27, Section 11, of the Written Contract wrote a letter to Respondents requesting arbitration in behalf of Petitioner's reinstatement with conditions.

The Union's request of September 17, 1970 was totally ignored by Respondents.

On February 8, 1971, Petitioner was finally racially discriminatorily discharged.

After three years, but less than four years of litigations, Petitioner secured the services of an Attorney, who with Petitioner filed the Original Complaint For Discriminatory Breach Of Contract For Damages in the Federal District Court, Central District, Los Angeles, California, on January 28, 1975.

The original complaint was dismissed by a judgment order entered on April 24, 1975; which was barred by 338(1), C.C.P., "A Liability Created by Statute".

On June 9, 1975, Petitioner's Motion To Vacate Judgment was denied, and an amended judgment order was entered on June 12, 1975, to include both Title 42, U.S.C., Section 1981; and 338(1), C.C.P., to bar the original complaint.

Petitioner did not appeal the above District Court order. It was very simple. There was a Written Contract and it had been filed in the pleadings, but Petitioner could not substantiate any evidence of racial discrimination; and as a result Petitioner could not substantiate any evidence of a breach of a Written Contract. Although, Petitioner had been, and was still diligently

searching for material evidence of racial discrimination, but Petitioner could not find it. The Attorney for Petitioner resigned from the Case because the possibility of discovery of racial discrimination was very slim and remote.

1. MATERIAL NEWLY DISCOVERED EVIDENCE

On October 29, 1975, Petitioner received information in the form of a telephone call of possible racial discrimation. This information had to be checked out; and, it required the employment of the Whelen Investigation Agency, 1807 West Beverly Boulevard, Los Angeles, California.

On November 18, 1975, Material Newly Discovered Evidence was discovered. This Material Newly Discovered Evidence consisted of four (4) White Bus Operator Employees (Caucasian) of Respondents who were performing dual employment. These four (4) White Bus Operator Employees (Caucasian) were found to be performing this dual employment long before Petitioner (Black) started performing his dual employment. These four (4) White Bus Operator Employees (Caucasian) were also performing dual employment when Petitioner (Black) was finally racially discriminatorily discharged on February 8, 1971. These four (4) White Bus Operator Employees (Caucasian) have continued to perform dual employment some six (6) years, and more after Petitioner was finally discharged. These

four (4) White Bus Operator Employees (Caucasian) were members of the Written Contract in which Petitioner (Black) was also, a member of the Written Contract. The Written Contract existed between Respondents and the United Transportation Union for all bus operators employed by Respondents. Respondents deducted a certain amount of each bus operator's earnings each month for membership dues in order to be protected by the Written Contract.

Respondents have not contested the above Material Newly Discovered Evidence. In fact, Respondents have stated the following:

> "Defendants will not in the interest of brevity, and in the hope of contributing to conservation of judicial time, contest the nature of the alledged newly discovered evidence, or the adequacy of Plaintiff's procedure."

2. PETITIONER MISTAKENLY FILED MOTION FOR LEAVE TO FILE AMENDED COMPLAINT, ATTACHED HERETO, AS AN EXHIBIT

As a result of the discovery of Material Newly Discovered Evidence, Petitioner filed the Motion To Vacate Judgment; in the District Court on December 15, 1975. Also, Petitioner mistakenly and incorrectly attached the

Motion For Leave To File Amended Complaint to the Motion To Vacate Judgment, hereto, as an exhibit.

The District Court held a Court Hearing on the above motions on January 12, 1976. The Motion To Vacate Judgment, and the Motion For Leave To File Amended Complaint, which was mistakenly and incorrectly attached hereto, as an exhibit, was denied in an order by the District Court entered on January 14, 1976.

3. PETITIONER CORRECTS MISTAKE

Based upon the District Court Hearing on January 12, 1976, Petitioner on January 15, 1976, called the District Court Clerk of the Honorable Judge E. Avery Crary's Court by telephone; and informed the District Court Clerk that He, Petitioner, was correcting his mistake by filing the Motion For Leave To File Amended Complaint, as a motion. Petitioner also, requested a date for hearing of the Motion so Petitioner could put it in the Notice Of Hearing on the Motion to be filed. The District Court Clerk gave Petitioner the date of April 26, 1976. The District Court Clerk explained to Petitioner the reason for giving a date that far in advanced was due to the Honorable E. Avery Crary's Court would be adjourned from January 20, 1976, until April 6, 1976.

On January 21, 1976, Petitioner went to the United State Courthouse,

321 North Spring Street, Los Angeles, California; and went into the Honorable E. Avery Crary's Court Clerk's office for the purpose of filing the Motion For Leave To File Amended Complaint. The Clerk read Petitioner's Motion; and, when the Clerk had finished reading and inspecting Petitioner's Motion, the Clerk arosed from chair and desk with Petitioner's Motion, and left his office. After approximately forty-five (45) minutes, the Clerk returned and stated, "Sure, you can file your Motion". The Clerk then put his stamp on the Motion For Leave To File Amended Complaint, and took his pen and initailed the stamp.

So, on the "sound discretion of the District Court," Petitioner filed Motion For Leave To File Amended Complaint in order to seek relief from final judgment of the District Court, on January 21, 1976, correcting the mistake that was made in the filing of motion on December 15, 1975.

On the "sound discretion of the District Court," Defendants was permitted to file a Motion In Opposition To Motion For Leave To File Amended Complaint; and, Petitioner was permitted by the District Court to file Motion In Support Of Motion For Leave To File Amended Complaint.

On the "sound discretion of the District Court", a District Court Hearing was held on April 26, 1976, on Petitioner's Motion For Leave To File Amended Complaint. The Motion was denied by the District Court order entered on

May 5, 1976.

On May 12, 1976, Petitioner filed Notice Of Appeal.

The Designation Of Record On Appeal was filed by Petitioner on May 17, 1976.

All documents were timely filed with the United States Court of Appeals, Ninth Circuit.

The United States Court of Appeals, Ninth Circuit filed a Memorandum on December 8, 1976, in which the Court dismissed Petitioner's Appeal.

A Petition For Rehearing was filed in the Court Of Appeals on December 27, 1976.

The Petition For Rehearing was denied by the Court Of Appeals on February 7, 1977.

The basis for Federal Jurisdiction is that Petitioner, a Citizen of these United States of America, have been denied the right to correct mistake in accordance with Federal Rule 60(b)(1), Title 28, Federal Rules of Civil Procedure; and file Motion For Leave To File Amended Complaint, as a motion pursuant to Rule 15(b), Title 28, Federal Rules of Civil Procedure; and in accordance with Rule 60(b)(2), Title 28, Federal Rules of Civil Procedure; to Conform to the Material Newly Discovered Evidence of Racial Discrimination pursuant to Title 42, U.S.C., Section 1981;

and conform to the evidence of Discriminatory Breach of a Written Contract, pursuant to 337(1), California Code of Civil Procedure, as the most appropriate California State Law controlling the statute of limitations in Petitioner's 1981 Cause of Action.

As a result of the above, Petitioner have been denied the right as a Citizen of these United States of America the Due Process of Law and Equal Protection in the Federal Court as precribed by the 14th Amendment of the United States Constitution.

ARGUMENT

Petitioner presents the following argument in his behalf:

I. THE UNITED STATES COURT OF APPEALS, NINTH CIRCUIT, IMPROPERLY DISMISSED PETITIONER'S APPEAL OF MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

The Court of Appeals, in pertinent part:

> "Because a final judgment had been entered against plaintiff and because the court had denied plaintiff's motion to set judgment aside under Rule 60, the second motion for leave to file an amended complaint has no significance."

A. MOTIONS FOR RELIEF FROM FINAL JUDGMENT ON GROUNDS OF RULE 60(b), TITLE 28, FEDERAL RULES OF CIVIL PROCEDURE IS ADDRESSED TO "SOUND DISCRETION OF THE FEDERAL DISTRICT COURT

B. Petitioner Made Mistake In The Filing Of Motions On December 15, 1975

As a result of the discovery of material evidence of Racial Discrimination, Petitioner made a mistake of filing the Motion To Vacate Judgment; and, attaching the Motion For Leave To File Amended Complaint, hereto, as an Exhibit "E", in the District Court on December 15, 1975.

Although, mistakenly filed, based upon Rule 60(b), Title 28, Federal Rules of Civil Procedure; the Motion To Vacate Judgment was timely filed in the District Court on December 15, 1975.

C. District Court Hearing

During the District Court Hearing on January 12, 1976, the following conversation took place, in pertinent part:

> "THE COURT: He is saying that, that is what his Complaint says, as I understand it. He is saying now that it is still occur-

ing.

Mr. Daniels: That is right, your Honor.

THE COURT: That would be a new cause of Action.

Mr. Conlon: That may well be, your Honor.

THE COURT: He hasn't alleged it. No, the Motion to Vacate.

Mr. Daniels: May I say a little more, sir?

THE COURT: Well, I understand your position, Mr. Daniels, I understand your position. If you file a new suit, maybe you have some grounds for a new action."

The Motion To Vacate Judgment, and the Motion For Leave To File Amended Complaint, attached hereto, as Exhibit "E", were both denied as motions in an order by the District Court entered on January 14, 1976.

D. Rule 60(b),(1), Title 28, Federal Rules Of Civil Procedure

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Petitioner corrected his mistake pursuant to Rule 60(b),(1), Title 28, Federal Rules of Civil Procedure.

Petitioner discovered and realized that He, Petitioner, had made a mistake in filing his motions on December 15, 1975. Based upon the above transcript, Petitioner contacted the District Court about correcting his mistake by filing the Motion For Leave To File Amended Complaint, as a motion to seek relief from the final judgment of the District Court.

On the "Sound Discretion of the District Court", Petitioner was given the date of April 26, 1976, as a date for Hearing the Motion For Leave To File Amended Complaint.

Petitioner corrected the mistake made in filing the motions on December 15, 1975, by striking the Motion To Vacate Judgment; and, filing the Motion For Leave To File Amended Complaint, as a motion.

On the "Sound Discretion of the District Court", Petitioner was permitted, and Petitioner filed the Motion For Leave To File Amended Complaint in the District Court on January 21, 1976, as a motion to seek relief from the final judgment of the District Court.

E. Rule 60(b),(2), Title 28, Federal Rules Of Civil Procedure

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Petitioner filed the Motion For Leave To File Amended Complaint in the

District Court on January 21, 1976, pursuant to Rule 60(b),(2), Title 28, Federal Rules of Civil Procedure, by attaching an affidavit on, Material Newly Discovered Evidence, By Floyd H. Daniels.

As a result of the discovery of material newly discovered evidence, which has also been brought out in the state-of the Case; and, in the statement of the Case in Petitioner's Opening Brief to the Court of Appeals, presented in the Appendix; which substantiates that petitioner (Black) was discharged on Febraury 8, 1971, for performing dual employment; while four (4) White Bus Operator Employees (Caucasian) were NOT discharged. These four (4) White Bus Operator Employees (Caucasian) have been permitted by Respondents to continue this dual employment. These four (4) White Bus Operator Employees (Caucasian), and Petitioner (Black) were members of the very same Written Contract.

Therefore, Petitioner (Black) was denied a "Right" that "White People (Caucasian)" enjoy, when Petitioner (Black) was discharged on February 8, 1971, because of Petitioner's Race - Negro (Black). This is Racial Discrimination, and a Discriminatory Breach of the Written Contract. This is a violation of the Federal Statute of the United States, Title 42, U.S.C., Section 1981, which states, as follows:

"All persons within the Jurisdiction of the United States shall have the same

right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other. R.S. 1977."

This United States Supreme Court ruled in Johnson v. Railway Express Agency on June 19, 1975, the followings:

"B. Title 42, U.S.C., 1981, being the present codification of one of the century-old Civil Rights Acts of 1966, 14 Stat. 27, on the other hand, on its face relates primarily to racial discrination in the making enforcement of contracts. Although this Court has not specifically so held, it is well settled among the federal courts of appeals -- and we now join them -- that 1981 affords a federal remedy against discrimination in private employment on the basis of race. An individual who establishes a cause of action under 1981 is entitled to both equitable and legal

relief, including compensatory and, under certain circumstances, punitive damages. See, e.g. Caperci v. Huntoon, 397 F.2d 799 (CAI), cert denied, 393, U.S. 940 (1968); Mansell v. Saunders, 372 F.2d 573 (CA5 1967). And a backpay award under 1981 is not restricted to the two years specified for backpay recover under Title VII." Johnson v. Railway Express Agency, 421 U.S. 454 (1975).

This United States Supreme Court again Ruled in 1976:

"Title 42, U.S.C., 1981 provides in pertinent part that all persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts ... as is enjoyed by white citizens .... We have previously held where discrimination against Negroes was in question, that 1981 afford a federal remedy against discrimination in private employment on the basis of race, and respondents do not contend otherwise." I.N. McDonald and Raymond L. Laird v. Santa Fe Trail Transprotation Company et al., No. 75-260, --US -- 44 LW 5067.

In regard to time for motion:

RULE 60(b), PROVIDES, THE MOTION SHALL BE MADE WITHIN A REASONABLE TIME, AND FOR REASONS (1), (2), AND (3), NOT MORE THAN ONE YEAR AFTER JUDGMENT, ORDER, OR PROCEEDING WAS ENTERED OR TAKEN.

The United States Court of Appeals, Fifth Circuit, have ruled:

> "Relief from final judgment is permitted under federal rule by motion or by independent action. Fed.Rules. Civ. Pros. rule 60(b), 28 U.S.C.A." Banders Mortgage Company v. United States 423 F.2d. 73, (1970).

F. Rule 15(b), Title 28, Federal Rules of Civil Procedure Amendments To Conform To The Evidence

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Petitioner, pursuant to the above Rule 15(b), filed Motion For Leave To File Amended Complaint, in the District Court on January 21, 1976, to conform to the material newly discovered evidence of Racial Discrimination, and a Breach of A Written Contract; and, establish jurisdiction pursuant to Title 42, U.S.C., Section 1981; and, 337(1), California Code of Civil Procedure, as the most appropriate California State Law Controlling the Statute of Limitations in this Title 42, U.S.C., Section 1981 Cause of

Action. The statute of limitations will be discussed more fully in Section II of this Argument.

The United States Court of Appeals, 8th Circuit, held:

> "Leave to amend pleadings should be freely granted when necessary to establish jurisdiction."

Also, again:

> "Amendments of pleadings to establish jurisdiction may be made following dismissal of a complaint." United Steelworker of America, AFL-CIO v. Mesker Bros Industries, Inc., C.A. Mo., 1972, 457 F.2d 91.

The United States Court of Appeals, Seventh Circuit, held:

> "Upon remand, plaintiff could as a matter of course amend her civil rights complaint to allege violation of the equal protection clause." Bett v. Board of Ed., City of Chicago, C.A. Ill. (1972) 466 F.2d 629.

G. Motion To Amend - Timeless.

There is no specific limitation of time for the purpose of filing a Motion For Leave To File Amended Com-

plaint. The limitation period appears to be governed by all of the facts and circumstances presented in each individual case.

H. Petitioner's Motion For Leave To File Amended Complaint Does Not Prejudice Respondents.

The Material Newly Discovered Evidence consist of Bus Operator Employees (Caucasian) who were employed by Respondents on, and before February 8, 1971; and they are currently still employed. The Bus Operator Employee(Caucasian) were members of the Written Contract in question on, and before February 8, 1971; and still remain members of the Written Contract in question. These Bus Operator Employees (Caucasian) worked under Respondents's Rule #7 on and before February 8, 1971; and they are currently still working under Respondents' Rule #7.

Since the Material Newly Discovered Evidence was, and still remains within the employment of Respondents, there clearly appears not to be any prejudice whatsoever, in that Respondents can always check their own records of employment.

I. Rule 15(c), Title 28, Federal Rules of Civil Procedure. Relation Back Amendments.

The United States Court of Appeals, Fifth Circuit, held:

> "This rule providing that amendments of pleading arising out of conduct, transaction or occurrence set forth in original pleading shall relate back to date of original pleading was designed so that cases would be determined on their merits, not technicalities." Taromina Corp. v. Escobedo, C.A.Tex. 1958, 254 F.2d 171, Certiorari denied, 79 S.Ct. 44, 358 U.S. 827, 3 L. Ed.2d 66.

The United States Court of Appeals, Second Circuit, held:

> "These rules were intended to facilitate the application of substantive law and not to fight it, and they contemplate free amending privileges." Brown v. Dunbar & Sullivan Dredging Co., C.A.N.Y. 1951, 189 F.2d 871.

J. Sound Discretion Of The District Court.

Upon the sound discretion of the District Court, Petitioner was permitted to correct his mistake by filing the Motion For Leave To File Amended Complaint in the District Court on January

21, 1976, in order to seek relief from a final judgment of the District Court entered on January 14, 1976.

The Motion For Leave To File Amended Complaint filed in the District Court on January 21, 1976 was in accordance with Federal Rules 15(b),and 15(c); and Rule 60(b), (1) and (2), Title 28, Federal Rules of Civil Procedure.

Upon the sound Discretion of the District Court, Respondents was permitted, and did file Motion In Opposition To Motion For Leave To File Amended Complaint in the District Court. Petitioner, also was permitted, and did file Motion In Support Of Motion For Leave To File Amended Complaint in the District Court.

Upon the Sound discretion of the District Court, the District Court held a District Court Hearing on Petitioner's Motion For Leave To File Amended Complaint on April 26, 1976.

The Motion For Leave To File Amended Complaint was denied by an order of the District Court entered on May 5, 1976.

Based upon the Federal District Court procedure provided by the District Court to Petitioner, who complied with the sound discretion of the District Court, guarded by accepted legal principles, and in the absence of an abuse of discretion; Petitioner filed the Motion For Leave To File Amended Complaint in

the District Court on January 21, 1976.

Therefore, the Motion For Leave To File Amended Complaint filed in the District Court on January 21, 1976, is of significance; and, the District Court order entered on May 5, 1976, is an appealable order. This is the order from which Petitioner has taken an appeal, having been filed on May 12, 1976.

In support of the above District Court procedure based upon the "Sound Discretion of the District Court", in granting Petitioner the "Right" to file motion in order to seek relief from a final judgment of the District Court; the Federal Courts have ruled the followings:

The Federal District Court in the State of Texas ruled the following; and, this Ruling was affirmed by the United States Court of Appeals, Fifth Circuit:

> "This rule allowing relief from mistakes, etc., is liberally construed." Oliver v. Monsanto Co., D.C.Tex. 1972, 56 F.R.D. 370, affirmed 487 F.2d. 514, (1972).

The United States Court of Appeals, Fifth Circuit, held:

> "Motions for relief from a final judgment are addressed to sound discretion of the district court, guarded by accepted legal principles, and in absence of an abuse

of discretion the Court of Appeals will not review the district court's determination."

Also, again the Court of Appeals held:

"Rule 60(b) allows the district court, on motions and upon such terms as are just, to relieve a party from the effects of a final judgment for any of a number of reasons. Among those reasons are mistake, surprise, excusable neglect, newly discovered evidence, fraud, release, and satisfaction." James J. Hand, Jr. v. United States. 441 F.2d 529, (1971).

The United States Court of Appeals, Tenth Circuit, held:

"Motion for relief from judgment or order for mistake, inadvertence, excusable nelect, newly discovered evidence or fraud is addressed to sound discretion of trail court. Fed.Rules Civ.Proc. rule 60(b), 28 U.S.C.A." Wilkin v. Sunbeam Corporation, 466 F.2d 714 (1972).

The United States Court of Appeals, Ninth Circuit, held:

"Motions under federal rule of civil procedure for relief

from judgment are addressed to sound discretion of district court. Fed.Rules Civ. proc. rule 60(b), 28 U.S. C.A." Martella v. Marine Cooks & Stewards U., Seafarers Int. U., 448 F.2d. 729 (1971).

The United States Court of Appeals, Tenth Circuit, held:

"Motion for relief from final judgment on ground of newly discovered evidence is addressed to sound discretion of trial court, and granting or denial of motion will not be disturbed on appeal except manifest abuse of discretion. Fed.Rules Civ.Proc. rule 60(b),(b),(2), 28 U.S.C.A." Valmont Industries, Inc., v. Enresco, Inc., 446 F.2d. 1193, (1971).

Based upon the above Federal Court Dicisions, including a Dicision by the United States Court of Appeals, Ninth Circuit, on the "Sound Discretion of the District Court" in granting or denying motions for relief of a final judgment; Petitioner's Appeal should NOT have been dimissed; and, Petitioner's Petition For Rehearing, should NOT have been denied. The dismissal of Petitioner's Appeal, and the denial of Petition For Rehearing clearly show an inconsistancy on the part of the United States Court of Appeals, Ninth Circuit's Ruling in regard to the "Sound Discretion of the District Court"

in the absence of an abuse of discretion of the District Court.

This inconsistant Ruling by the United States Court of Appeals, Ninth Circuit has created a federal question in this Title 42, U.S.C., Section 1981 Cause of Action that this United States Supreme Court should review and change the dicision of the Court of Appeals.

II. THE DISTRICT COURT IMPROPERLY DENIED PETITIONER'S "MOTION FOR LEAVE TO FILE AMENDED COMPLAINT."

A. District Court Cited Four (4) Cases as Reason For Denying Petitioner's Motion For Leave To File Amended Complaint.

"THE COURT: Well I know. You are trying to get under the four-year Statute of Limitations. But the cases are against you, Mr. Daniels. That's all there is to it. The cases are against you. I will give you the citations, and you can decide, then, whether you want to appeal, because it is just one of those things."

The District gave the following Citations:

1. Smith v. Cremins, 308 F.2d 187;
2. Willis v. Reddin, 418 F.2d 702;

3. Donovan v. Reinbold, 433 F.2d. 738;
4. Johnson v. Bayless, Memorandum, March 3, 1975.

The above four (4) Cases will reveal that, not at any time did the plaintiffs in each Case try to show, or substantiate that there was Written Contract involved in their Civil Rights Actions. Therefore, 338(1), C.C.P., "A Liability Created by Statute" was ruled the Controlling Statute of Limitations in each of the above four (4) Cases.

Also, it is noted at this time, that "Johnson v. Bayless", Memorandum is an unpublished Decision.

B. A Discriminatory Breach Of The Written Contract

Petitioner has substantiated, without a doubt, in the Concise Statement of the Case in this Writ of Certiorari; and, in the Statement of the Case in the Opening Brief, in pertinent part, to the Court of Appeals, in the Appendix, that there was in fact a BINDING AGREEMENT - WRITTEN CONTRACT between Respondents and the United Transportation Union, in which Petitioner was a bonafide member.

Petitioner, also, has substantiated that Hearings, and Appeal Hearings were held by Respondents, in behalf of Petitioner's Discipline Matter; and, in accordance with the Written Contract.

Also, Petitioner has substantiated that after a review of all of these Hearings, and Appeal Hearings, Petitioner (Black) was blamed for performing dual employment; and Petitioner (Black) was finally racially discriminatorily discharged on February 8, 1971; while four (4) White Bus Operator Employees (Caucasian) were NOT blamed for performing dual employment; and, was NOT discharged. In fact, these four (b) White Bus Operator Employees (Caucasian) have been permitted by Respondents to continue this dual employment.

These four (4) White Bus Operator Employees (Caucasian), and Petitioner (Black) were members of the same Written Contract.

Respondests deducted $10.50 per month from Petitioner's Earnings for the payment of membership dues in order that Petitioner would be protected by the Written Contract.

Therefore, when Petitioner was Racially Discriminatorily Discharged on February 8, 1971, it involved, and created a Discriminatory Breach of the WRITTEN CONTRACT.

Petitioner, therefore, has filed Motion For Leave To File Amended Complaint, pursuant to Rule 15(b), to conform to the evidence of the Discriminatory Breach of the Written Contract by inserting the apecific part of the Written Contract that was breached when Petitioner was racially discriminatorily

discharged on February 8, 1971; which is Article #27, Section #1, Part (e), of the Written Contract, in pertinent part:

> "If, after a review of suspension discharge, or disqualification, it is mutually agreed that an employee who was suspended, discharged or disqualified, was completely blameless of charges regarding the offense, he shall be reinstated to his former position without loss of seniority and will be paid wages lost as though he had not been suspended or discharged. It is mutually agreed that no entry shall be made on the employee's record of such suspension, discharge, or disqualification, if by mutual agreement the employee was found to be completely blameless."

Based upon the above Discriminatory Breach of Written Contract, Petitioner filed Motion For Leave To File Amended Complaint, pursuant to Federal Rule 15(b), to conform to the evidence of a Discriminatory Breach of Written Contract; and, establish jurisdiction pursuant to Section 337(1), California Code of Civil Procedure, as the most appropriate California State Law controlling the Statute of Limitations in this Title 42, U.S.C., Section 1981, Cause of Action.

In support of the above, Petitioner cite the followings:

The California Code of Civil Procedure, Section 337(1); in pertinent part:

> "Within four years: 1. An action upon any contract obligation or liability founded upon an instrument in writing."

The California Courts held:

> "An action to recover damages for the breach of a written contract is founded upon a written instrument, within the meaning of subdivision 1 of section 337 of the Code of Civil Procedure, providing a four years' limitation for the commencement of such actions." Ahlers v. Smiley, 163 Cal. 200, (1912).

The California Court, also, have held:

> "An action on a written contingent fee contract for legal services rendered was filed in time where it was filed well within the four - year period prescribed by Code Civ. Proc. 337. Subd. 1; the two-year period prescribed by Code Civ. Proc. 339, Subd. 1, for abligations not founded on a written instrument, did not apply." Stone v. Carpenter, 27 Cal. Rptr. 203, (1963)

The California Courts, in 1955, held:

> "A liability created by statute is one in which no element of agreement enters. It is an obligation which the law creates in the absence of an agreement." Gardner v. Basich Bros. Const. Co., 44 Cal.2d 191 (1955).

The United States Court of Appeals, Ninth Circuit, in 1962, held:

> "The California courts have held that an action is based 'upon a liability created by statute,' within the meaning of section 338(1), if the liability would not exist but for statute. Or, conversely, an action is not based 'upon a liability created by statute' if the right is one which would exist at common law in the absence of statute." Smith v. Cremins, 308 F.2d 187 (1962).

The United States Court of Appeals, Third Circuit, in 1967, held:

> "Since the Civil Rights Act contains no provision limiting the time within which an action thereunder may be brought, the applicable

Statute of Limitations is that which the State would enforce had the action seeking similar relief been been brought in State Court." Henig v. Odorioso, 385 F.2d 491 (1967).

The United States Court of Appeals, Third Circuit, again in 1971, held:

"There is no federal statute of limitations applicable to 1981, and the federal courts would look to the most nearly analogous state statute of limitations." Young v. International Telephone & Telegraph Co, 438 F.2d 757 (1971).

This United States Supreme Court, on June 19, 1975, ruled:

"A. Since there is no specifically stated or otherwise relevant federal statute of limitations for a cause of action under 1981, the controlling period would ordinarily be the most appropriate one provided by state law. See O'Sullivan v. Felix, 233 U.S. 318 (1914) (Civil Rights Act of 1871); Auto Workers v. Hoosier Corp., 383 U.S. 696, 701-704 (1966) (Labor Management Relation Act); Cope v. Anderson, 331 U.S. 461 (1947) (National Bank Act); Chattanooga

Foundry v. Atlanta, 203 U.S. 390 (1906) (Sherman Act); Campbell v. Haverhill, 155 U.S. 610 (1895) (Patent Act)."

Petitioner was racially discriminatorily discharged on February 8, 1971.

Petitioner filed the original complaint in the District Court on the 28th day January, 1975, well within the four-year statute of limitations prescribed by the California State Law, Section 337(1), California Code of Civil Procedure.

Based upon the above California Court Decisions; the United States Courts Appeals Decisions; and this United States Supreme Court Ruling; the denial of Petitioner's Motion For Leave To File Amended Complaint by the District Court in an order entered on May 5, 1976; has created a Federal Question in this Title 42, U.S.C., Section 1981 (A Federal Statute) Cause of Action.

Based on the above, this United States Supreme Court should review the record of Petitioner's Cause of Action, and change the decision of the District Court.

III. WHY THIS UNITED STATES SUPREME COURT SHOULD REVIEW PETITIONER'S TITLE 42, U.S.C., SECTION 1981 CAUSE OF ACTION; AND, CHANGE THE DECISIONS OF THE LOWER COURTS

A. Due Process Of Law, And Equal Protection Of The Laws

Petitioner have sought in the Federal Courts; and, is seeking in this Supreme Court the same God Given Human Rights that the very concerned and determined Congress sought on July 4, 1776, when these brave and concerned men wrote and signed the "Declaration Of Independence", as follows, in pertinent part:

> "We hold these truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness..."

Later, on September 17, 1787, the Delegates to the Convention put into final form and signed the Constitution of these United States of America.

The Human Rights struggle continued, and the United States Congress passed and adopted to the Federal Statute, Title 42, U.S.C., Section 1981, in 1866, as follows:

> "All person within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit to all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other. R.S. 1977."

To aid in the above 1981 struggle for Human Civil Rights, this Supreme Court Reviewed and Ruled in Johnson v. Railway Express Agency on June 19, 1975, the followings, in pertinent part:

> TITLE 42, U.S.C., SECTION 1981, BEING THE PRESENT CODIFICATION OF SECTION 1 OF CENTURY-OLD CIVIL RIGHTS ACT OF 1866, 14 STAT. 27, ON THE OTHER HAND, ON ITS FACE RELATES PRIMARILY TO RACIAL DISCRIMINATION IN THE MAKING AND ENFORCEMENT OF CONTRACTS. ALTHOUGH THIS COURT HAS NOT SPECIFICALLY SO HELD, IT IS WELL SETTELED AMONG THE FEDERAL COURTS OF APPEALS -- AND WE NOW JOIN THEM -- THAT 1981 AFFORDS A FEDERAL REMEDY AGAINST DISCRIMINATION IN PRIVATE EMPLOYMENT ON THE BASIS OF RACE. AN INDIVIDUAL WHO ESTABLISHES A CAUSE OF ACTION UNDER 1981, IS ENTITLED TO BOTH EQUITABLE AND LEGAL RELIEF, INCLUDING COMPENSATORY AND UNDER CERTAIN CIRCUMSTANCES, PUNITIVE DAMAGES.

This Supreme Court again, ruled in 1975, in Johnson v. Railway Express Ageney, the followings, in partinent part:

> SINCE THERE IS NO SPECIFICALLY STATED OR OTHERWISE RELEVANT FEDERAL STATUTE OF LIMITATIONS FOR A CAUSE OF ACTION UNDER SECTION 1981, THE CONTROLLING PERIOD WOULD ORDINARILY BE THE MOST APPROPRIATE ONE PROVIDED BY STATE LAW.

This Supreme Court, also, Reviewed and Ruled in McDonald and Laird v. Santa Fe Trail Transportation Co. et al., on June 25, 1976, the followings, in pertinent part:

> TITLE 42, U.S.C., 1981 PROVIDES IN PERTINENT PART THAT "ALL PERSONS WITHIN THE JURISDICTION OF THE UNITED STATES SHALL HAVE THE SAME RIGHT IN EVERY STATE AND TERRITORY TO MAKE AND ENFORCE CONTRACTS... AS IS ENJOYED BY WHITE CITIZENS.... WE HAVE PREVIOUSLY HELD WHERE DISCRIMINATION AGAINST NEGROES WAS IN QUESTION, THAT 1981 AFFORDS A FEDERAL REMEDY AGAINST DISCRIMINATION IN PRIVATE EMPLOYMENT ON THE BASIS OF RACE.

Petitioner's Motion For Leave To File Amended Complaint have been improperly denied; and, the Appeal improperly dismissed by the lower Courts.

Since this United States Supreme

Court has Reviewed and Ruled in the two (2) above 1981 Cause of Actions, this Court should likewise, Review and Rule in Petitioner's 1981 Cause of Action.

Article 3, Section 1, of the United States Constitution, states:

> "The judical power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office."

Article 3, Section 2, Clause 1, of the United States Constitution, as follows:

> "The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to

which the United States shall be a party; to controversies between two or more states, between citizens of different states; between citizens of the same state claming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens, or subjects."

The 14th Amendment of the United States Constitution, as follows:

"All persons born or naturalized in the United States, subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside."

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Petitioner was born on November 2, 1925, in Madison County, Texas; and, was reared by two wonderful Christian Negro Parents (Black).

Petitioner received his education

in these United States of America; and, had the opportunity of serving in the U.S. Navy during World War II in the dangerous waters of the great Pacific Ocean in order to help guard and protect this great Nation, and the great things that this Nation stands for.

Therefore, Petitioner is in fact, a Natural Born Citizen of these United States of America; and, presently reside in the State of California; where all of Petitioner's 1981 Cause of Action has taken place.

As a Citizen of the United States, Petitioner has been improperly deprived of the "Equal Protection of Law", as precribed by the above 14th Amendment of the United States Constitution without "Due Process of Law", by the lower Courts.

The "Due Process of Law", and "Equal Protection of the Law" was denied to Petitioner when the District Court improperly denied Petitioner's Motion For Leave To File Amended Complaint; and, when the United States Court of Appeals, Ninth Circuit, improperly dismissed Petitioner's Appeal; and denied Petition For Rehearing.

In accordance with the above Article 3, Section 1, of the United States Constitution, this Supreme Court has the power to decide whether a federal, state or local law is constitutional, that is, whether a law is permitted or forbidden by the Constitution.

The District Court have ruled that the California State Law, 338(1), C.C.P., "A Liability Created by Statute", is the most appropriate State Law Controlling the Statute of Limitations in this Title 42, U.S.C., Section 1981 Cause of Action.

Petitioner has substantiated without a doubt that there was in fact a Written Contract that was discriminatorily Breached; and thereby, filed Motion For Leave To File Amended Complaint in order to conform to the evidence; and establish jurisdiction pursuant to Title 42, U.S.C., Section 1981; and, pursuant to the California Law, 337(1), C.C.P., as the most appropriate California State Law controlling the Statute of Limitations in this 1981 Cause of Action.

This Supreme Court has reviewed and made a ruling on the Statute of Limitations of a 1981 Cause of Action in Johnson v. Railway Express Agency, 421, U.S. 454 (1975), which was cited in the Motion For Leave To File Amended Complaint, and above, in this Writ of Certiorari. Therefore, it is the duty of this Supreme Court to be concerned, and thereby, correct this situation about this Supreme Court's Ruling not being adhered to, and respected by the Lower Courts in making their Rulings. This is what the above Article 3, Section 1, of Our United States Constitution is about, which states, in pertinent part:

"THE JUDICAL POWER OF THE UNITED STATES SHALL BE VESTED IN ONE SUPREME COURT..."

Therefore, this Supreme Court should review this 1981 Cause of Action, and make a Ruling in order to remove the Cloudy situation that exist in this 1981 Cause of Action in the State of California; whereby, an Honorable Federal Judge can sit on a Federal Bench in the Federal District Court with a Written Contract that was Breached; in the Pleadings before the Honorable Federal Judge's eyes; and, this Honorable Federal Judge rules that the Statute of Limitations in Petitioner's 1981 Cause of Action is controlled by 338(1), C.C.P., "A Liability Created by Statute."

This is surely a Federal Question that should be reviewed by this Supreme Court; and, a Ruling made in order to afford Petitioner the "Due Process of Law", and "Equal Protection of the Laws", in the Federal Court as prescribed by the 14th Amendment of the United States Constitution.

Petitioner abided by the "Sound Dicretion of the District Court", in correcting Petitioner's mistake, and in accordance with the Federal Rules of Civil Procedure; and, filed Motion For Leave To File Amended Complaint, as a Motion for relief from the final judgment of the District Court. On the "Sound Discretion of the District Court", the District Court conducted a District Court Hearing on the Motion For Leave To File Amended Complaint. The Motion was denied by a District Court Order. Petitioner appealed the District Court's "Denial Order" in accordance with the Federal Rules of Appellate procedure.

The United States Court of Appeals, Ninth Circuit, made an Inconsistant Ruling; and thereby, improperly dismissed Petitioner's Appeal by denying the Petition For Rehearing.

Therefore, the Court of Appeals has improperly denied Petitioner the Right of "Due Process of Law", and "Equal Protection of the Laws", in the Federal Courts as precribed by the 14th Amendment of the United States Constitution. This, surely, is a Federal Question that should be reviewed by this Supreme Court; and, a Ruling made.

The United States Congress, in accordance with the above Article 3, Section 1, of the United States Constitution; has ordained and established the United States Courts of Appeals, and the Districts.

As a result, most of the Federal Cases will begin, and end in the District Courts, or the Courts of Appeals. But, this Supreme Court has the Right to look over all such Cases, and change the decisions of the lower Courts, if they are wrong.

Based upon the facts, the United States Constitution, the State and Federal Statutes, the Federal Rules of Civil Procedure, and the Courts' Citations in this Writ of Certiorari; Petitioner strongly contend that the Decisions of the lower Courts were wrong.

Since this Supreme Court has the

right to review the records in this 1981 Cause of Action, this Supreme Court should review the records in this 1981 Cause of Action; and, change the decisions of the Lower Courts; in order that Petitioner can be afforded the "Due Process of Law", and "Equal Protection of the Laws", as prescribed and duly guaranteed by the 14th Amendment of Our United States Constitution.

CONCLUSION

Petitioner, respectfully request that this Supreme Court of the United States of America Review this Title 42, U.S.C., Section 1981 Cause of Action; order a reversal of the Lower Federal Courts' Decisions; and, the Motion For Leave To File Amended Complaint, So Granted.

DATED: April 20, 1977.

Respectfully submitted,

FLOYD H. DANIELS

In Propria Persona

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. _____

FLOYD H. DANIELS,

Appellant and Petitioner,

vs.

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, a public coporation; and JACK R. GILSTRAP, as General Manager of the SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT,

Appellees and Respondents.

APPENDIX

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1. Statement of the Case; in Appellent Opening Brief, to United States Court Of Appeals, Ninth Circuit, In Pertinent Part. Page 50 through Page 59.

2. Amended Complaint For Discriminatory Breach of Contract, Proposed to be Filed. Page 60 through Page 69.

STATEMENT OF THE CASE,

IN PERTINENT PART

I, Floyd H. Daniels, Plaintiff-Appellant, herinafter referred to as ("Appellant") v. Southern California Rapit Transit District, Defendants-Appelles, hereinafter referred to as ("Appellees"), hereby submit this Motion For Leave To File Amended Complaint before the United States Court of Appeals, Ninth Circuit; upon an appeal from the judgment order in which the District Court entered on the 5th day of May, 1976, Providing that:

> "IT IS ORDERED, ADJUDGED AND DECREED THE MOTION FOR LEAVE TO FILE AMENDED COMPLAINT IS DENIED."

1. WRITTEN CONTRACT

The true fact is that there was a binding agreement, a written contract between Appellees and the United Transprotation Union, in which Appellant was a bonafide member; which was discriminatorily breached when Appellant was racially discriminatorily discharged on the 8th day of February, 1971.

Appelles' attorney filed a Motion For Summary Judgment In Favor Of Defendants in the District Court on March 26, 1975, which included an affidavit by He Michael Conlon; and A Declaration of

John S. Wilkins, Director of Industrial Relations for Appelles, which included the then existing written contract between Appellees and the United Transportation Union, of which Appellant was a member. This written contract can be found in the Clerk's Transcript, starting on page 29, through 44. Also, in the Declaration of John S. Wilken, are the documents from the time Appellant was put on suspension, and until Appellant was finally finally discharged on February 8, 1971, Clerk's Transcript, page 45 through page 68.

The Declaration of John S. Wilkens are as follows, in pertinent part:

> "On July 31, 1969, the District and the United Transportation Union entered in a contract, to which I am a signatory." (CT 29).

Again, the Declaration of John S. Wilkens, in pertinent part:

"Article 27 of the contract states:

"DISCIPLINE RULE

> "This labor Contract between the Southern California Rapid Transit District and United Transportation Union is based upon a spirit of cooperation between the employees and the District to provide a fair and equitable basis for the parties to handle discipline matters which may be brought before them.

> The parties do recognize the responsibility of each to provide fair treatment to both parties. In order that this preamble may effectuated to the fullest, the procedures for handling discipline matters in an amicable manner are generally outlined on the following Pages.
> Section 1. Hearing Before Discharge or Disqualification."
> (CT 37)

Also, the Declaration of John S. Wilkens, in pertinent part:

> "Article 56(a) of the contract provides:
> "Except as otherwise provided herein, this Contract shall be made effective June 1, 1969, and shall remain in full force and effect to and including May 31, 1972..." (CT 43).

2. EMPLOYMENT

Appellant was employed by Appelles as a bus operator on January 11, 1964.

After a conference with the Division Manager, Mr. James Carson, Appellant filed an application to teach in the Los Angeles Unified School District on September 26, 1968.

A Confidential Reference of Approval was submitted to the Los Angeles Unified School District on October 3, 1968,

by Appellees.

3. DUAL EMPLOYMENT

Appellant started performing dual employment of operating a bus for Appellees at night, and teaching mathematics in the Los Angeles School District during the day, on October 28, 1968. Appellant continued this dual employment with an excellent driving record through March 20, 1970; when Appellant was arrested on an allegation of a female passenger who sign a complaint with the Los Angeles Police Department.

4. SUSPENSION, HEARINGS, DISCHARGE, APPEALS REINSTATEMENT, AND FINAL DISCHARGE

On March 27, 1970, an Agreement was signed by Appellant, William C. Haag, Local Chairman of the Union, #1565; and, Mr. J.T. Johnston, Manager, Division 3207, for Appellant to remain on suspension without pay until Appellant's Case could be adjudicated in the Los Angeles County Superior Court. (CT 48).

On April 24, 1970, Appellees broke the written agreement signed on March 27, 1970. A former hearing was held at Division 3207; and, Appellant was discharged. (CT 50).

Pursuant to Article 27, Section 9, of the written contract, Appellant and the Union appealed the discharge. The discharge was upheld on May 6, 1970. (CT 51-52).

Pursuant to Article 27, Section 10, of the written contract, this action was further appealed; and, on June 11, 1970, Appellees wrote the following letter, in pertinent part:

> "The district is agreeable to reversing the decisions of Messrs. Brown and Rise on the discharge of falsification of sick report, et al, with the understanding that the agreement concerning the postponement of the hearing of March 27 is still in full force and effect. It must be further understood that in the event Operator Daniels is exonerated of the pending charge of attemped rape, he must then make an election as to whether he desires to work for the District as a bus driver, or for the Los Angeles City School District as a teacher. It is agreed that he cannot do both." (CT 53).

On June 19, 1970, Appellant received a verdict of "NOT GUILTY" by a Judge and Jury in the Superior Court, in and for the County of Los Angeles. (CT 55).

On July 1, 1970, a formal hearing

was held. At the conclusion of the hearing, the following notations were made on Appellant's Employee's Notice of Hearing:

> "July 1, 1970. District decision is: Reinstated to the service of the District upon receipt of proof from the L.A. City School District that they have accepted your resignation. This is with the understanding that as long as you work for the District, this will be your sole employment, and that there will be no payment for time lost. Mr. Daniels and Mr. Haag refused to accept. K.E. Parker, Manager, Division #3207." (CT 56).

Pursuant to Article #27, Section 9, of the written contract, Appellant and the Union appealed Appellees' second decision; and, on July 15, 1970, Appellees again offered to reinstate Appellant on the condition that Appellant sever his employment with the Los Angeles Unified School District. (CT 58).

Appellees' offer for reinstatement was amended on July 17, 1970 with conditions. (CT 59).

On July 19, 1970, Appellant was reinstated to the service of Appellees, with conditions. The reinstatement is substantiated by the Daily Report of payroll changes, dated October 5, 1970. (CT 126).

Pursuant to Article 27, Section 10, of the written contract, this reinstatement with conditions was appealed by Appellant and the Union; and, on July 28, 1970 a meeting was held between Appellees and the Union with no result.

On September 17, 1970, the Union requested arbitration in the following letter, in pertinent part:

> "Pursuant to Article 27, Section 11, of the labor Contract between the United Transportation Union and the Southern California Rapid Transit District, the Union therefore request that the dispute be submitted to arbitration pursuant to the provisions of Article 26, Section 11, of the labor contract. Mr. W.C. Haag, Local Chairman of Local 1565, has been designated by the Union as its member of the Arbitration Board. Please advise us as to the name of the District's Representative on the Board." (CT 60-61).

The Union's request was ignored by Appellees, which is contrary to the five (5) day period as specified in Article 26, Section 7, of the written contract. (CT 33-35).

On December 18, 1970, Appellees wrote a letter to the Union which state, in pertinent part:

> "For your information, we have been advised that Operator Daniels is presently teaching at Horace Mann Jr. High

School and as long as he maintain this employment, this will preclude his returning to work for the District and he, therefore, should be severed from our employ." (CT 62-63).

On January 28, 1971, Appellees made their final offer in a letter to Appellant, in pertinent part:

"We accordingly enclose a check in the amount of $1,098.24, representing the above mentioned compensation after appropriate deductions. In addition, we hereby offer you reinstatement upon the conditions above specified, which are that you accept the offer and sever your school System employment within the permitted five-day period. Your failure to comply with these conditions during such five-day period will, of course automatically result in the permanent loss of any reinstatement rights on your part." (CT 66).

On February 8, 1971, Appellant was finally racially discriminatorily discharged. The discharge is verified by the Daily Report of Payroll Changes, dated, March 25, 1971. (CT 127).

Appellant returned the check in the amount of $1,098.24 to Appellees on

February 27, 1971. (CT 67-68).

5. MATERIAL NEWLY DISCOVERED EVIDENCE

On November 18, 1975, Material Newly Discovered Evidence was discovered. This Material Newly Discovered Evidence consisted of four (4) White Bus Operator Employees (Caucasian) of Appellees who were performing dual employment. These four (4) White Bus Operator Employees (Caucasian) were found to be performing this dual employment long before Appellant (Black) started his dual employment of operating a bus for Appellees, and teaching school. These four (4) White Bus Operator Employees (Caucasian) were also performing dual employment when Appellant (Black) was finally racially discriminatorily discharged on February 8, 1971. Also, these four (4) White Bus Operator Employees (Caucasian) have continued to perform dual employment some (6) years, or more later, after Appellant (Black) was racially discriminatorily discharged on February 8, 1971. The Material Newly Discovered Evidence is substantiated by an "Affidavit Of Material Newly Discovered Evidence", by Appellant, which also, included Exhibits "A" and "B", by the Whalen Investigation Agency, 1807 West Beverly Boulevard, Los Angeles, California 90057. (CT 224-238).

Also, there is an "Affidavit of Additional Material Newly Discovered

Evidence", by Appellant, which also, include the Special Page in the brown envelope sent up to this Court of Appeals. (CT 259-263).

Appellees have not contested this Material Newly Discovered Evidence. In fact, Appellees have stated the followings:

> "Defendants will not, in the interest of brevity, and in hope of contributing to the conservation of judicial time contest the nature of the alleged newly discovered evidence or the adequacy of plaintiff's procedure." (CT 181).

FLOYD H. DANIELS

4650 Coliseum Street, #1
Los Angeles, California
90016
(213) 296-4588

Plaintiff, In Propria
Persona

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FLOYD H. DANIELS, Plaintiff, vs. SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, a public corporation; and JACK R. GILTSTRAP, as General Manager of the SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, Defendants.	Civil No. 75-290-EAC AMENDED COMPLAINT FOR DISCRIMINATORY BREACH OF CONTRACT

Plaintiff complains of Defendants, and, in so complaining alleges:

1.

Pursuant to Rule 15, Title 28, Federal Rules of Civil Procedure, Plaintiff amends his Complaint For Discrina-

tory Breach of Contract for Damages, in the Action filed in this Court on January 28, 1975.

2.

The jurisdiction of this Court is invoked under Section 1981, Title 42, United States Code, in that the Action arises under the "Equal Protection of the Laws" Clause, 14th Amendment, United States Constitution, implemented by Congress under paragraph (5) of said Amendment as Section 1981, Title 42, of said Code, enuciating individual common-law rights guaranteed and protected by said Amendment, as hereinafter more fully appears. Pursuant to Section 337(1), C.C.P., which provides for a statute of limitation of action to be brought on a written contract to be four (4) years, as the most appropiate State Law controlling the period of limitation in this Action.

3.

Plaintiff is, and during all times herein mentioned was, a natural-born citizen of the United States of America of Nego decent; Defendant SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT - SCRTD - successor in interest to the Los Angeles Metropolitan Transit Authority, came into being, and exists under, duly enacted Laws of the California Legislature, Defendant GILSTRAP being the General Manager thereof, said Defendants at all times herein mentioned residing, existing, operating, and coming within, the

jurisdiction of this Court; Plaintiff has at all times herein mentioned resided in Los Angeles County, California.

4.

On or about January 11, 1964, in full exercise of his common-law right to contract, a right protected and guaranteed to him under said 14th Amendment as enunciated in said Section 1981, Plaintiff entered into a written contract of employment with Defendant SCRTD or its predecessor as a Bus Operator therefor, said position being held by him for a period of more than six (6) years from said date pursuant to the Statute, of the State of California, governing the formation and continues existence of Defendant SCRTD.

5.

During the latter part of September, 1968, a J.C. Carson, then Manager of Plaintiff's Division 3207, discussed with Plaintiff his record of 65 demerits - a 90 demerit ceiling making discharge mandatory - notified him that approximately one-half of said demerits were assessed against him because of non-payment or slow-payment of debts; the denouement of said discussion was that Plaintiff endeavor to abtain a second job.

6.

On or about September 26th, 1968, after being interviewed for a teaching assignment with the Los Angeles School

Board, Plaintiff applied for a teaching assignment therewith and listed said J.C. Carson, of Defendant SCRTD, as a reference.

7.

On or October 3rd, 1968, in compliance with its own Rule 7, Defendant SCRTD authorized Plaintiff to accept and hold a secondary employment, said authorization being executed by a W.C. Scholl, Director of Industrial Relations, prior to Plaintiff's acceptance of a teaching assignment with said School Board which began on or about October 28, 1968.

8.

During the subsequent 17 months of authorized dual employment, Plaintiff's driving-record was exemplary, said 65 demerits diminished to 15, no accidents, and only one "missout" due to an unintentional misunderstanding about holiday schecule.

9.

On or about March 20th, 1970, Plaintiff was arrested for alleged attempted rape of one of his passengers, whereupon, by agreement between him, his Union, and Defendant SCRTD, he was suspended on March 27th, 1970, pending the outcome thereof.

10.

On or about April 24th, 1970,

Defendant SCRTD, by and through its Officers and Agents, violated its said agreement with said attempted rape, with his alleged violation of its said Rule 7, with his alleged violation of Section 1220, Title 13, California Administrative Code, and with his alleged falsification of sick reports; at a Hearing thereabout, Defendant SCRTD Arbitrarily tood Plaintiff off suspension and discharged him, although said rape charge was still pending in the California Superior Court.

11.

Said discharge of employment was appealed to the District General Manager of SCRTD, at the hearing of which Defendant SCRTD, dropped its charge of falsification of sick-reports, but its alleged violations of said Rule 7, and of said Section 1220, 13 C.A.C., were sustained though unproved at said hearing on or about June 11th, 1970.

12.

On or about June 19th, 1970, Plaintiff was unanimously acquitted, in said Superior Court, of said charge of attempt to commit rape.

13.

In his letter dated June 23rd, 1970, addressed to Kenneth R. Moore, Union Chairman, Plaintiff demanded that said Union take his Cause to arbitration in accordance with the provision there-

for in the Union Labor Contract; instead, a SCRTD-Division hearing was held on Plaintiff's alleged violations of said Rule 7 and of said Secton 1220, at which hearing said alleged violations were sustained, but he and the Union refused to accept said ruling.

14.

On July 19, 1970, Plaintiff was reinstated with the condition that the United Transportation Union send a letter signed by Plaintiff to the Los Angeles School Board, stating that he would resign if he commenced working for any other entity other than SCRTD. The United Transportation Union and Plaintiff refused the condition for reinstatment, and appealed to the highest Officer of SCRTD in accordance with the written contract.

15.

On or about September 17th, 1970, said Union addressed a letter to Defendant SCRTD requesting the invoking of Arbitration procedures under said Union Labor Contract and named its representative therefor; the date of the filing of Action, Defendant SCRTD has not complied with the provisions of said Labor Contract.

16.

After some month of further negotion between Plaintiff's Union and Defendant SCRTD, on or about January

28th, 1971, Defendant SCRTD offered to reinstate Plaintiff in its employment on the condition that, within 5 days he sever his employment with said School Board, tendering to him with its offer its check drawn in his favor for the amount of back pay it had been withholding from him; Plaintiff rejected, on or about February 27th, 1971, said offer and check, said rejection being made on the ground that he still had an unrevoked permission, pursuant to said Rule 7, to engage in secondary employment, and that no basis had been shown for its racially discriminatory demand that he not be dually employed.

17.

Although at no time did Plaintiff engage in any act of constituting misconduct or dereliction of duty with regard to his employment by SCRTD, nevertheless, said Defendant SCRTD, by and through its Officers and Employees, breached its said written contract with him by its discriminatorily depriving him of his vested right, granted under its Rule 7 to engage in dual employment because of his race (Black); ~~it also breached~~ it also breached its agreement of employment-suspension pending the determination of the attempted rape-charge by its unwarrantedly discharging him on trumped-up, non-existent, charges, to his shame and mortification; and it further breached its contract with him when other white bus operator (Caucasian) employees were engaged in dual employment, that he had its unrevoked permis-

sion, pursuant to its said Rule 7, that he could engage in dual employment, recial discriminatorily demanded without cause that he accept its employment exclusively.

Article #27, Section #1, Part (e) of the Written Contract holds, in pertinent part:

> "If after a review of a suspension, discharge or disqualification, it mutually agreed that an employee who was suspended, discharged or disqualified, was completely blameless of charges regarding the offense, he shall be reinstated to his former position without loss of seniority and will be paid wages lost as though he had not been suspended or discharged. It is mutually agreed that no entry shall be made on the employee's record of such suspension, discharge or disqualification, if by mutual agreement the employee was found to be completely blameless."

The Hearing Officers, the Appeals Hearing Officers, and other Oficers that sat in on the Hearing as employees for SCRTD were all White (Caucasian). These Officers fully knowing that Plaintiff was completely blameless of the alleged charges racially discriminatorily discharged Plaintiff on February 8, 1971. As a result of this racial discriminatory breach of contract on February 8,

1971, Plaintiff has suffered the following:

1. Loss of his position as a Bus Operator for SCRTD;
2. Loss in back pay in the amount of Eighty Thousand Dollars ($80,000.00);
3. Loss of retirement benefits and other benefits, the exact amount of which is unknown at this time.

WHEREFORE, Plaintiff prays for judgment in his favor and against Defendants as follows:

1. That Plaintiff be reinstated to his former position as a Bus Operator for SCRTD in accordance with Article #27, Section #1, Part (e), of the Written Contract;
2. Back pay set forth in this cause of action in the amount of Eighty Thousand Dollars ($80,000.00);
3. Retroactive restoration of all lost benefits, including retirement benefits.
4. Punitive and exemplary damages in the amount of One Hundred Fifty Thousand Dollars ($150,000.00), tax-free;
5. Attorney fees in accordance with contract between Plaintiff and Defendant SCRTD;
6. Cost of suit incurred;
7. For such other and further relief as this Court may deem just.

STATE OF CALIFORNIA)
) SS.
COUNTY OF LOS ANGELES)

I, FLOYD H. DANIELS, am Plaintiff in this Action; I have read the foregoing Amended Complaint and know the contents thereof; that the foregoing is true of my own knowledge except as to the allegations made on information and belief, and that as to those allegations, I believe it to be true.

_____
FLOYD H. DANIELS

Subscribed and sworn
before me this _____day of _____,1976.

_____
Notary Public in and for
said County and State